

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:

Geographic Partitioning and Spectrum
Disaggregation by Commercial Mobile
Radio Services Licensees

WT Docket No. 96-148

Implementation of Section 257 of the
Communications Act -- Elimination of
Market Entry Barriers

~~GN Docket No. 96-1130~~

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**COMMENTS OF THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA")¹ herewith submits its comments on the above-captioned Notice of Proposed Rulemaking.² In this *Notice*, the Commission proposes to allow all broadband Personal Communication Service ("PCS") licensees to subdivide their licenses through geographic partitioning or spectrum disaggregation. As a long time supporter of licensee flexibility, PCIA generally supports the proposals contained in the *Notice*, with a few minor modifications suggested herein,

¹PCIA's federation of councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

²Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, WT Docket No. 96-148 (July 15, 1996) ("*Notice*").

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and urges the Commission to act quickly to realize the competitive and other benefits of these policies for PCS licensees.

I. INTRODUCTION

In the *Notice*, the Commission proposes to modify its broadband PCS service rules to expand eligibility for geographic partitioning and to permit spectrum disaggregation.³ The Commission reasons that these proposals will "facilitate the use of broadband PCS spectrum by providing licensees with additional flexibility to tailor their business strategies, will increase competition by allowing market entry by new players, and will expedite the provision of broadband PCS service to areas that may not otherwise receive broadband PCS or other wireless services in the near term."⁴

Since its inception, PCIA has advocated the adoption of Commission rules that provide optimal flexibility to wireless service providers. The proposals contained in the *Notice* will do just that. In addition to granting greater licensee flexibility, the proposals will increase competition by removing entry barriers for small businesses, rural telephone companies, minority and women owned businesses, and other parties. The modifications outlined in the *Notice* are in the public interest, and PCIA urges rapid adoption of the proposals, as modified herein.⁵

³*Notice* at ¶ 1.

⁴*Id.*

⁵PCIA notes, however, that in the specific context of licenses involving installment payment plans, partitioning and disaggregation could potentially implicate
(continued...)

II. THE COMMISSION SHOULD PERMIT PARTITIONING ALONG ANY RECOGNIZED GEOPOLITICAL BOUNDARIES

The *Notice* proposes that "any partitioning of broadband licenses be required to be along county lines."⁶ Commenters are, however, invited to discuss whether there are alternative geopolitical boundaries that are suitable for employment in the partitioning of broadband PCS licenses. As discussed below, while PCIA agrees that some limitation is required in order to "reduce the administrative burden on the Commission and minimize interference controls,"⁷ increased flexibility could be obtained consistent with the Commission's goals if partitioning were permitted along any recognized geopolitical boundary.

Allowing a more liberalized partitioning of licenses will add flexibility to the Commission's proposal by permitting both existing and new PCS licensees to tailor services to their perceptions of public demand. Requiring the filing of a waiver request to achieve partitioning on a basis other than county lines may unnecessarily delay achievement of rational PCS service arrangements and add to the Commission's processing load. Limiting the partitioning rule to geopolitical boundaries will avoid the imposition of excess administrative burdens on the Commission. Thus, PCIA's

⁵(...continued)
fraud concerns. Conduct designed to evade installment payments or build-out requirements should not be tolerated under the FCC's rules.

⁶*Notice* at ¶ 18.

⁷*Id.*

approach will allow for partitioning to the full extent of administrative feasibility and will help speed up the delivery of service to under-served areas. Indeed, PCIA notes that the rural telephone company partitioning rules already allow partitioning where it "[c]onforms to established geopolitical boundaries."⁸

PCIA also believes the Commission should allow licensees to seek expedited waivers of the boundary requirements for partitioning proposals. Such waivers should be granted in cases where rivers, lakes, mountains or other natural boundaries, rather than geopolitical designations, would better determine the parameters of a license partition.

III. DISAGGREGATION SHOULD BE PERMITTED IMMEDIATELY

The Commission proposes allowing spectrum disaggregation prior to January 1, 2000, and eliminating the condition that the licensee must satisfy a five-year build-out requirement before disaggregating.⁹ The Commission seeks comment, however, on whether it should retain the five-year build-out requirement before allowing disaggregation.

PCIA supports permitting immediate disaggregation of spectrum regardless of whether the licensee has met the five-year construction requirements. Section 24.229(d), which currently permits a broadband PCS licensee to partition its license at the turn of

⁸47 C.F.R. § 24.714(d)(1). While the rule mentions county lines as a proper partition boundary, the reference is illustrative, not limiting.

⁹Notice at ¶ 38.

the century, was adopted in the belief that rapid disaggregation would impede competition in an immature broadband marketplace.¹⁰ PCIA believes, however, that the *Notice* correctly concludes that such time limitations are no longer obligatory and that allowing early entry of new competitors will invigorate, rather than impede, competition.

The Commission's proposal to allow immediate disaggregation independent of the five-year build-out requirements will also help to achieve the objective of new Section 257 of the Communications Act, as amended, to remove market entry barriers for entrepreneurs and other small businesses. Further, the actions contemplated in the *Notice* are consistent with the 1996 Act's overall goal of establishing "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.¹¹ PCIA accordingly urges the FCC to allow disaggregation immediately, regardless of the extent of a licensee's current build-out.

IV. ADDITIONAL BUILD-OUT FLEXIBILITY SHOULD BE PROVIDED TO PARTITIONEES AND DISAGGREGATEES

In the *Broadband PCS Memorandum Opinion and Order*, the Commission determined that broadband PCS is a "highly competitive service" with built-in incentives

¹⁰See *New Personal Communications Services*, Memorandum Opinion and Order, 9 FCC Rcd 4957, 4985 (1994).

¹¹S. Conf. Rep. No. 104-230, 104th Cong., 2nd Sess. 1 (1996).

that will lead to swift construction of facilities to meet service demands.¹² Nevertheless, the FCC concluded that service would be expedited to the public and spectrum would be subject to efficient use if minimum construction requirements were established.¹³ In the *Notice*, the Commission presents two build-out options aimed at ensuring that both portions of a partitioned licensing area and both systems in a disaggregated market will provide service to the public. PCIA supports both allowing two options for construction benchmarks and the specific terms of the Commission's first option, which requires a partitionee or disaggregatee to satisfy the same construction requirements as the original licensee, regardless of when the disaggregated or partitioned license was acquired.

PCIA recommends, however, that the Commission modify the second option of its proposed construction requirements. Under the Commission's second option, there would be "more modest build-out requirements" for a partitioned area or for a disaggregated block where the original licensee meets its five year build-out requirements and certifies that it will meet the ten-year coverage requirements for its entire license area.¹⁴ Specifically, a partitionee or disaggregatee would be required only to satisfy "the substantial service requirement for renewal expectancy for its partitioned area [or disaggregated block] by the end of the original ten-year license term."¹⁵ The

¹²9 FCC Rcd at 5018.

¹³See 47 C.F.R. § 24.203.

¹⁴*Notice* at ¶ 34.

¹⁵*Id.*

Commission justifies the relaxed requirements based on the fact that, under this option, the original licensee maintains its original coverage commitment for the complete license area.

PCIA suggests that the Commission further relax the second build-out option to allow the original licensee to certify that *both* the five and ten year build-out obligations will be satisfied. First, the goals of the construction requirements -- expedited service and efficient use of spectrum -- are protected by the fact that the original licensee retains its coverage commitment. Second, the inherent competitive incentives present for all broadband PCS licensees will encourage each partitionee and disaggregatee to move quickly toward initiating and maintaining substantial service to the public.

V. THE ONE MHZ DISAGGREGATION MINIMUM THRESHOLD SHOULD BE ADOPTED

The *Notice* tentatively concludes that the Commission should not permit disaggregation for broadband PCS in blocks smaller than one MHz of paired frequencies. PCIA supports this conclusion. PCIA believes that a one MHz block of paired frequencies is small enough to give licensees paramount flexibility in structuring their businesses. At the same time, PCIA believes one MHz disaggregation provides large enough blocks to be technically functional while, at the same time, avoiding the administrative problems which would result from random disaggregation. Moreover, allowing one MHz disaggregation will facilitate the entry of small business and entrepreneurial competitors into the market by providing additional niche opportunities. Further, disaggregation into one MHz blocks, unlike larger blocks of spectrum, will

allow parties to structure their deals in a manner that avoids under-utilized disaggregated spectrum.

VI. THE COMMISSION SHOULD HONOR CONTRACTUAL PROVISIONS ALLOWING ORIGINAL LICENSEES THE ABILITY TO RECLAIM PARTITIONED OR DISAGGREGATED SPECTRUM IF A NEW LICENSEE DEFAULTS

An issue not discussed in the *Notice* concerns the consequences of default after partition or disaggregation. PCIA proposes that a carrier that participates in spectrum disaggregation or geographic partitioning be allowed to reclaim licenses upon default by the transferee party under the disaggregation or partitioning contract, if the original licensee's build-out, including the disaggregated or partitioned market, is sufficient to meet the applicable five year and ten year construction benchmarks. Allowing the use of such contractual measures would avoid confusion concerning the status of a partitioned block after default.

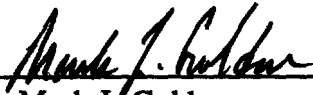
VII. CONCLUSION

PCIA supports the overall goals of the *Notice* -- modifying the FCC's broadband PCS service rules to extend eligibility for geographic partitioning and to authorize

immediate spectrum disaggregation. Because additional flexibility in the rules will allow greater competition and invite new players into the broadband PCS sector, PCIA recommends that the Commission adopt the proposals outlined above.

Respectfully submitted,

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Dated: August 15, 1996

CERTIFICATE OF SERVICE

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